

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. A-6400

PETITION OF CAROL E. FLYNN

OPINION OF THE BOARD

(Opinion Adopted January 16, 2013)

Effective Date of Opinion: February 12, 2013)

Case No. A-6400 is an application for a variance, under Sections 59-G-2.00(c)(1) and 59-G-3.1 of the Zoning Ordinance, of eight hundred sixteen (816) square feet from the R-60 Zone minimum lot size of 6,000 square feet. This application is filed in connection with Case No. S-2838, an application for a special exception, under Section 59-G-2.00, for an accessory apartment.

The subject property is Lot 18, Block 8, Westboro Subdivision, located at 4512 Chase Avenue, Bethesda, Maryland, 20814, in the R-60 Zone.

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED

Carol Flynn, the Petitioner, appeared at the hearing and gave sworn testimony in support of the application. She stated that she applied for the special exception and discovered that she could not meet the requirement of Section 59-G-2.00(c)(1) that the minimum lot size for an accessory apartment is 6,000 square feet, except where the minimum lot size of the zone is larger. Ms. Flynn testified that her lot was recorded in 1939, and was therefore subject to the requirements of the 1928 Zoning Ordinance, including the minimum lot size of 5,000 square feet, which it exceeded.

Ms. Flynn testified that the accessory apartment is located in the basement of her home, which was refinished in 2003. She reconfigured the bathroom and laundry facilities but made no changes to the footprint of the house, and no exterior changes except to pave a walkway to the entrance of the apartment (Exhibit 5).

Ms. Flynn stated that she currently has a tenant who shares her kitchen with her but that she would prefer to get the special exception for an accessory apartment so that she could install separate cooking facilities. She stated that her tenant is a young professional who could not otherwise afford to live in her neighborhood, which is close to a metro stop, and voiced her opinion that providing affordable housing is consistent with the goal in the Bethesda-Chevy Chase Master Plan to provide more access to affordable housing in the Bethesda-Chevy Chase area. She further stated that having a tenant in the house enables her to afford living in her house.

In response to a Board question, Ms. Flynn stated that her property has two parking spaces on her driveway and that there is on-street parking available, by permit. She stated that currently her tenant uses the visitor's parking permit she is authorized to have. She believes that the tenant as a resident of the neighborhood is also entitled to a resident's parking permit.

FINDINGS OF THE BOARD

Section 59-G-3.1 of the Zoning Ordinance gives the Board of Appeals authority to grant variances, as authorized in Section 59-A-4.11(b) upon proof by a preponderance of the evidence that:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property;

The Board finds that the lot was legally created in 1939, in accordance with the 1928 Zoning Ordinance, which required a 5,000 square-foot minimum lot size. The Board notes that for all other zoning purposes, the property would be subject to the standards in the 1928 Ordinance, including the 5,000 square-foot minimum lot size, as was the case when Ms. Flynn obtained a building permit to renovate her basement (See Exhibit No. 4). The Board notes further that creation of the accessory apartment did not change the footprint of this legally constructed house. The Board finds that these factors create an extraordinary situation peculiar to this property, and that the strict application of Section 59-G-2.00(c)(1) in combination with this characteristic would create a practical difficulty for Ms. Flynn by preventing her from using her property for an otherwise permitted purpose. The Board further finds that granting the variance would do substantial justice to Ms. Flynn, that there is no lesser relaxation that would give her

substantial relief, and that granting this variance is in keeping with the spirit of the Zoning Ordinance.¹

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions;

The Board finds that the variance requested is the minimum needed to meet the 6,000 square foot lot size.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property; and

The Board finds that the variance requested, to facilitate the accessory apartment use, continues the residential use of the subject property, in conformance with the Bethesda-Chevy Chase Master Plan. The Board further agrees with Ms. Flynn and finds that making the accessory apartment available furthers the Plan's goal to provide more affordable housing.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the accessory apartment will have little if any outward impact. The entrance to the apartment is in the rear, preserving the single-family, residential appearance of the home. There will be no change to the footprint or otherwise to the exterior of the home. Adequate parking is available. There was no opposition to this variance.

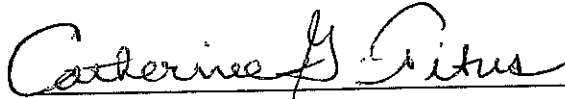
Accordingly, the requested variance of 816 square feet from the required 6000 square-foot lot size is granted subject to the following condition:

The Petitioner shall be bound by her testimony and exhibits of record, to the extent that such testimony and evidence are identified in this Opinion.

On a motion by Catherine G. Titus, Chair, seconded by Carolyn J. Shawaker, with Stanley B. Boyd in agreement and David K. Perdue, Vice-Chair, necessarily absent, the Board adopted the following Resolution:

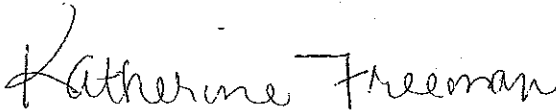
¹ The Board notes that at the time of the public hearing, Bill No. 31-12, which creates a new licensing procedure for accessory apartments, instead of the special exception process in many instances, was pending before the County Council and has since been enacted. The Board further notes that under that provision, Ms. Flynn's application for an accessory apartment would likely be approved with no need for a variance.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 12th day of February, 2013.



Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.